

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

GRAYMONT (PA), INC.

and

Case 06-CA-126251

**LOCAL LODGE D92, UNITED CEMENT,
LIME, GYPSUM AND ALLIED WORKERS,
A DIVISION OF INTERNATIONAL
BROTHERHOOD OF BOILERMAKERS,
IRON SHIPBUILDERS, BLACKSMITHS,
FORGERS AND HELPERS, AFL-CIO**

**RESPONDENT GRAYMONT (PA), INC.'S
EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (the "Board"), Respondent Graymont (PA), Inc. ("Graymont" or the "Company") hereby files its Exceptions to the Administrative Law Judge's ("ALJ") Decision dated December 30, 2014. Graymont excepts to the Decision as follows:

1. Graymont excepts to the ALJ's factual finding that under the pre-March 2014 work rules, "violations of different classifications (for instance, a single violation of Group A and a single violation of Group B) were not combined" for purposes of imposing progressive discipline. (ALJ Decision, p. 5, lines 1-3).

2. Graymont excepts to the ALJ's factual finding that "the 'pyramiding,' *i.e.*, combining of Group A and B violations for purposes of applying progressive discipline steps" was a "major change." (ALJ Decision, p. 9, lines 33-34, 49-50).

3. Graymont excepts to the ALJ's factual finding that reclassification of Company's former Group C work rule 4 ("sleeping on the job) and former Group C work rule 7 ("failure to follow proper lock-out procedures") as Group B violations "puts other employees at risk" (ALJ Decision, p. 18, lines 2-7).

4. Graymont excepts to the ALJ's factual finding that the Company contended, in its post-hearing brief, that "it doesn't matter how the rules are written." (ALJ Decision, p. 18, lines 9-10).

5. Graymont excepts to the ALJ's conclusion that the Board should not "defer the unilateral change allegations to the parties' contractual dispute resolution mechanism." (ALJ Decision, p. 14, lines 33-34).

6. Graymont excepts to the ALJ's conclusion that the Company's clarifications to its rule regarding tardiness constitute "material and significant changes" to the rule. (ALJ Decision, p. 17, lines 5-8; p. 18, lines 34-35).

7. Graymont excepts to the ALJ's conclusion that the Company's clarifications to its disciplinary "reset" period constitute "material and significant changes" to the rule. (ALJ Decision, p. 17, lines 10-22; p. 18, lines 34-35).

8. Graymont excepts to the ALJ's conclusion that the combining of Group A and Group B violations constitutes a "material and significant change" from the Company's practices with respect to issuance of discipline. (ALJ Decision, p. 17, lines 24-31; p. 18, lines 34-35).

9. Graymont excepts to the ALJ's conclusion that the Company's reclassifying of former Group C work rule 4 ("sleeping on the job) and former Group C work rule 7 ("failure to follow proper lock-out procedures") as Group B violations constitutes a "material and significant change" to the Company's work rules. (ALJ Decision, p. 18, lines 3-8, 34-35).

10. Graymont excepts to the ALJ's failure to find that the Company and Charging Party specifically negotiated the terms of the management rights clause at issue and reached agreement on such clause. (ALJ Decision, p. 4, lines 10-21).

11. Gryamont excepts to the ALJ's related factual finding that the "parties' bargaining history provides absolutely no support for the Company's waiver argument." (ALJ Decision, p. 23, lines 6-7).

12. Graymont excepts to the ALJ's legal finding that deferral of the instant dispute is inappropriate because of the allegations that the Company unlawfully delayed in responding to the Union's information request (ALJ Decision, p. 13, lines 33-44), where the allegations are (and have been determined to be) without merit (ALJ Decision, p. 2, lines 1-9).

13. Graymont excepts to the ALJ's legal finding that deferring the instant dispute would result in the risk of inconsistent results and analysis by the NLRB and the arbitrator. (ALJ Decision, p. 14, lines 30-34).

14. Graymont excepts to the ALJ's rejection of the Company's argument that the NLRB should defer the unilateral change allegations to the parties' contractual dispute resolution mechanism. (ALJ Decision, p. 14, lines 33-34).

15. Graymont excepts to the ALJ's failure to consider the Company's evidence of the Board's deferral of the Company's December 2011 unilateral implementation of maximum overtime hours, and the NLRB's deferral of that matter to the arbitrator's decision, and upholding of this action on appeal. (ALJ Decision, p. 14, lines 36-41).

16. Graymont excepts to the ALJ's rejection of the documentary evidence regarding the above-deferral, and finding that such evidence or the admitted testimonial evidence is not relevant to the deferral issue. (ALJ Decision, p. 15, fn. 9).

17. Graymont excepts to the ALJ's rejection of the Company's argument that the Company's changes to discipline under the work rules were not material, substantial and significant. (ALJ Decision, p. 16, lines 41-43).

18. Graymont excepts to the ALJ's findings of "self-evident" material changes to absenteeism. (ALJ Decision, p. 16, line 45 to p. 19, line 3).

19. Graymont excepts to the ALJ's factual finding that Charging Party made an effective demand to bargain, and legal finding that there was no waiver for failure to request bargaining (ALJ Decision, p. 19, lines 13-14, 25).

20. Graymont excepts to the ALJ's factual and legal finding that the Company refused to bargain with the Union. (ALJ Decision, p. 19, fn. 14 and lines 26-27).

21. Graymont excepts to the ALJ's application of the wrong standard for determining whether the management rights clause constitutes a waiver of Charging Party's right to bargain over the changes at issue. (ALJ Decision, p. 20, lines 13-34).

22. Graymont excepts to the ALJ's finding that "Respondent does not dispute that this [clear and unmistakable waiver rule] is the correct rule to apply," (ALJ Decision, p. 20, lines 23-24) where the ALJ is bound to apply such rule, and any argument by the Company concerning the "correct rule" would have been futile.

23. Graymont excepts to the ALJ's legal conclusion that Charging Party did not waive its right to bargain over the work rules at issue. (ALJ Decision, p. 21, line 13).

24. Graymont excepts to the ALJ's failure to find that the management rights clause at issue does not contain a "clear and unmistakable" waiver of Charging Party's right to bargain over the work rules at issue. (ALJ Decision, p. 21, lines 18-22).

25. Graymont excepts to the ALJ's finding that the management rights clause at issue contains only "a *general* right 'to discipline and discharge for cause' and a *general* right 'to adopt and enforce rules and regulations and policies and procedures,'" in determining the absence of a clear and unmistakable waiver. (ALJ Decision, p. 21, lines 18-22) (original emphasis).

26. Graymont excepts to the ALJ's failure to consider the specific language in the management rights clause which also gives the Company the right "to set and establish standards of performance for employees." (ALJ Decision, p. 21, lines 18-22).

27. Graymont excepts to the ALJ's finding that the management-rights language at issue is similar to the management right "to establish and enforce shop rules," from which a clear and unmistakable waiver cannot be inferred. (ALJ Decision, p. 21, lines 24-36).

28. Graymont excepts to the ALJ's failure to find that the management-rights language at issue does not constitute a waiver of its right to bargain about discipline and discharge. (ALJ Decision, p. 21, lines 38-44).

29. Graymont excepts to the ALJ's failure to consider all of the express language of the management rights clause, the parties' practices, and bargaining history in determining whether Charging Party waived its right to bargain.

30. Graymont excepts to the ALJ's adoption of the reasoning in *Kennametal, Inc.*, 358 NLRB No. 68 (2012) in support of his Decision, a non-binding, non-precedential decision in light of *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014).

31. Graymont excepts to the ALJ's remedy ordering the Company to "cease and desist" from "Changing the terms of conditions of employment of its unit employees, including, but not limited to, unilaterally implementing change to its absenteeism and/or work rules disciplinary policies [sic] without first notifying the Union and giving it an opportunity to collectively bargain." (ALJ Decision, page 28, lines 40 to 45).

32. Graymont excepts to the ALJ's finding and conclusion that the cases relied upon by the Company support the General Counsel's case. (ALJ Decision, p. 22, lines 26-48).

33. Graymont excepts to the ALJ's finding and conclusion that the parties' bargaining history provides absolutely no support for the Company's waiver argument. (ALJ Decision, p. 23, lines 6-7).

34. Graymont excepts to the ALJ's finding and conclusion that the absence of evidence of discussion of discipline, absenteeism or the right to "change such rules" "precludes a finding that...the party alleged to have waived its rights consciously yielded its interest in the matter." (ALJ Decision, p. 23, lines 9 to 13).

35. Graymont excepts to the ALJ's finding and conclusion that the bargaining history of the parties "is directly in opposition to the Company's waiver claim." (ALJ Decision, p. 23, lines 16-17).

36. Graymont excepts to the ALJ's factual finding that the absenteeism policy in effect before the March 2014 implementation was the "product of extensive bargaining between the parties." (ALJ Decision, p. 23, lines 17-19).

37. Graymont excepts to the ALJ's reliance on the parties' pre-2006 bargaining history in rejecting the Company's waiver argument. (ALJ Decision, p. 23, lines 16-26).

38. Graymont excepts to the ALJ's conclusion that the Company's evidence of Charging Party's effort in June 2014 negotiations to negotiate changes to the management-rights clause to support its waiver argument is "specious." (ALJ Decision, p. 23, lines 28 to 29, p. 24, lines 1 to 4).

39. Graymont excepts to the ALJ's conclusion that the Company had a duty to furnish information regarding the absenteeism policy to Charging Party, on the grounds that the Company had a duty to bargain over the decision to change the absenteeism policy. (ALJ Decision, p. 25, lines 22 to 28).

40. Graymont excepts to the ALJ's remedy ordering the Company to post a "Notice to Employees" requiring the Company to state that "WE WILL NOT change the terms of conditions of your employment, including the absenteeism and the work rules disciplinary policies, without first notifying the Union and giving it an opportunity to collectively bargain." (ALJ Decision, Appendix).

41. Graymont excepts to the ALJ's failure to impose the NLRB's standard remedial language in his Order and Notice to Employees. (ALJ Decision, p. 28, lines 40-45, Appendix; *see New NGC Inc.*, 359 NLRB No. 116, *fn. 1* (2013)).

Respectfully submitted,

Graymont (PA), Inc.

By: /s/ Eugene A. Boyle
One of Its Attorneys

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Dated January 27, 2015

CERTIFICATE OF SERVICE

Eugene A. Boyle, an attorney for the Employer, hereby certifies that a true and correct copy of the foregoing Respondent Graymont (PA), Inc.'s Exceptions to the Decision of the Administrative Law Judge was served upon the following on this 27th day of January, 2015, via the NLRB's CM/ECF system and e-mail as indicated below

Via CM/ECF

Gary Shinnars, Executive Secretary
National Labor Relations Board
Room 11610
1099 14th St. NW
Washington, DC 20005-3419
(via e-filing and 8 copies by Federal Express)

Via Federal Express, and e-mail to:

Dalia Belinkoff
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Via U.S. mail overnight to:

Local Lodge D92, United Cement, Lime,
Gypsum and Allied Workers, A division of
International Brotherhood of Boilermakers,
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/s/ Eugene A. Boyle
Eugene A. Boyle
One of the Attorneys for Graymont (PA), Inc.